

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, New York 10004

In the Matter of the Arbitration BetweenName of Claimants

David J. and Maryanne L. Malach

90-02499

Name of Respondents

Stuart James Company, Inc.
Russell Finster

REPRESENTATION

For Claimants: Robert I. Rabinowitz, Esq.

For Respondents: John F. McBride of Hart and Trinen.

CASE INFORMATION

Statement of Claim filed: September 7, 1990.

Claimant's Submission Agreement signed on: August 28, 1990.

Respondent Finster's Statement of Answer was filed: February 4, 1991.

Respondent Finster's Submission Agreement signed on: January 25, 1991.

Statement of Answer filed by Respondent, Stuart James Company, Inc. on:
February 27, 1991.Respondent, Stuart James Company, Inc.'s Submission Agreement signed on:
February 26, 1991.HEARING INFORMATION

Hearing Date/Sessions: August 8, 1991 - two sessions.

Hearing Location: New York City, New York.

CASE SUMMARY

Claimants, David J. and Maryanne L. Malach ("Claimants") stated that Claimants' account was a joint account in which the trades were made by David Malach. Claimants' alleged that David Malach was a novice investor with limited experience. Claimants' alleged that Respondent Russell Finster ("Finster") pushed Claimants into buying speculative and risky "penny stocks" in which Respondent Stuart James Company, Inc. ("Stuart James") made a market. Claimants alleged that Respondents placed Claimants in unsuitable investments. Claimants alleged that Finster recommended transactions that were for the benefit of Respondents and that Stuart James charged excessive mark ups and failed to disclose the mark ups. Claimant alleged that the excessive mark ups were achieved by Stuart James manipulating the purchases and sales of securities through various clients in efforts to control and dominate the market.

Respondents maintained that Claimants were informed about the nature of their investments from the beginning and that Claimant knew the risks and understood those risks. Finster maintained that all investments recommendations were made in good faith. Respondents maintained that for every transaction the Claimants made they received confirmations which disclosed that Stuart James was a market maker in the stock. Respondents maintained that all disclosures were made in accordance to the applicable law. Respondents maintained that Claimants were informed throughout, by Finster and Stuart James, where the stock was trading. Respondents maintained that Claimants' account was properly maintained at all times and that Respondents committed no fraud, no deception and disclosed all information as required by law.

RELIEF REQUESTED

Claimants requested: 1) Repayment of actual losses of \$44,218.75; 2) Interest on that amount from January, 1989 through the date of the award; 3) Post award interest until the day of payment; 4) Punitive damages; and, 5) Reasonable attorney's fees and costs of this proceeding.

Respondents requested: That Claimants' claim be dismissed in its entirety and all costs and attorneys fees be assessed against the Claimants.

AWARD

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That Claimants' claim is denied in its entirety.
2. That parties shall bear their own respective costs, including attorneys fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, forum fees of \$800 (\$400 per hearing session) are assessed equally between the parties. Claimants are assessed forum fees in the amount of \$400; however, Claimants are entitled to offset this amount with their hearing session deposit so that no more fees are due from the Claimant. The amount due from the Respondents as forum fees is \$400.

Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Name	Public/Industry
Martin D. Eile, Esq	Public Arbitrator
Edward T Hill	Public Arbitrator
Edward S. De Salvio	Industry Arbitrator

Concurring Arbitrator's Signature


Martin D. Eile, Esq.

DATED BY NASD
AUGUST 9, 1991

Page 4
Award 90-02499

STATE OF: ~~New York~~
COUNTY OF: ~~New York~~

New Jersey
Bergen

S.S.:

On this *15th* day of *August*, 1991, before me personally appeared Edward S. De Salvio known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Barbara King

BARBARA KING
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES NOV. 10, 1993

STATE OF: New York
COUNTY OF: New York

S.S.:

On this 13th day of August, 1991, before me personally appeared Martin D. Eile, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Sandra Neal Woodard

SANDRA NEAL WOODARD
NOTARY PUBLIC, State of New York
No. 34-4721913
Qualified in Queens County 92
Commission Expires July 31, 1992

Page 4
Award 90-02499

STATE OF: New York
COUNTY OF: ~~New York~~ Westchester

S.S.:

On this 16th day of August, 1991, before me personally appeared Edward T. Hill known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

BRENDA J. FRAZIER
Notary Public, State of New York
No. 4782391
Qualified in Westchester County
Commission Expires July 31, 1992

Brenda J. Frazier

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That Claimants' claim is denied in its entirety.
2. That parties shall bear their own respective costs, including attorneys fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, forum fees of \$800 (\$400 per hearing session) are assessed equally between the parties. Claimants are assessed forum fees in the amount of \$400; however, Claimants are entitled to offset this amount with their hearing session deposit so that no more fees are due from the Claimant. The amount due from the Respondents as forum fees is \$400.

Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Name	Public/Industry
Martin D. Eile, Esq	Public Arbitrator
Edward T Hill	Public Arbitrator
Edward S. De Salvio	Industry Arbitrator

Concurring Arbitrator's Signature

Edward T. Hill

Edward T. Hill

DATED AND SIGNED
AUGUST 29, 1991

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That Claimants' claim is denied in its entirety.
2. That parties shall bear their own respective costs, including attorneys fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, forum fees of \$800 (\$400 per hearing session) are assessed equally between the parties. Claimants are assessed forum fees in the amount of \$400; however, Claimants are entitled to offset this amount with their hearing session deposit so that no more fees are due from the Claimant. The amount due from the Respondents as forum fees is \$400.

Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATION PANEL

Name	Public/Industry
Martin D. Eile, Esq	Public Arbitrator
Edward T Hill	Public Arbitrator
Edward S. De Salvio	Industry Arbitrator

Concurring Arbitrator's Signature



Edward S. De Salvio

DATED BY NASD
AUGUST 27, 1991